



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA FACSIMILE AND FIRST CLASS MAIL**

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DEC 08 2010

RE: MUR 6257  
John Callahan, *et al.*

Dear Mr. Reiff:

On March 3, 2010, the Federal Election Commission (the "Commission") notified your clients of a complaint alleging that they violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided a copy of the complaint to your clients.

After reviewing the allegations contained in the complaint, your clients' response, and publicly available information, the Commission, on October 19, 2010, found reason to believe that John Callahan, Friends of John Callahan and John V. Filipos, in his official capacity as treasurer, and John Callahan for Congress and John V. Filipos, in his official capacity as treasurer, violated 2 U.S.C. § 441i(e) and 11 C.F.R. § 110.3(d), provisions of the Act and the Commission's regulations. In addition, the Commission found reason to believe that John Callahan for Congress and John V. Filipos, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(3) and (4). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Matthew S. Petersen", written over a horizontal line.

Matthew S. Petersen  
Chairman

Enclosures  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENTS:** John Callahan MUR: 6257  
7 John Callahan for Congress and  
8 John V. Filipos, in his official capacity as treasurer  
9 Friends of John Callahan and John V. Filipos,  
10 in his official capacity as treasurer  
11

12 **I. INTRODUCTION**

13 This matter was generated by a complaint filed with the Federal Election Commission by  
14 Robert A. Gleason, Jr., alleging violations of the Federal Election Campaign Act of 1971, as  
15 amended (the "Act"), by John Callahan, Friends of John Callahan and John V. Filipos, in his  
16 official capacity as treasurer, ("Mayoral Committee") and John Callahan for Congress and John  
17 V. Filipos, in his official capacity as treasurer ("Federal Committee").

18 In 2009, John Callahan was simultaneously an unopposed candidate for mayor of  
19 Bethlehem, Pennsylvania and a federal candidate for Pennsylvania's 15<sup>th</sup> Congressional District.  
20 The complaint in this matter alleges that Callahan's mayoral campaign paid for research used to  
21 determine the feasibility of Callahan running for Congress. Callahan's mayoral committee,  
22 Friends of John Callahan and John V. Filipos, in his official capacity as treasurer, ("Mayoral  
23 Committee") made two payments totaling \$9,932 to vendor Stanford Campaigns, the first on  
24 May 6, 2009 for \$4,500 and the second on June 22, 2009, for opposition self-research.<sup>1</sup> The  
25 complaint alleges that the research was for the purpose of "testing the waters" in connection with  
26 a possible federal candidacy, and therefore constituted an impermissible in-kind contribution to  
27 John Callahan and Callahan for Congress and John V. Filipos, in his official capacity as treasurer

<sup>1</sup> According to their website, Stanford Research, an entity in Austin, Texas, performs a wide variety of campaign-related services, including opposition research, for various organizations, including local, state and Federal candidates. <http://www.oppresearch.com>.

1 ("Federal Committee"). Complaint at 3. The complaint further alleges that the Federal  
2 Committee did not disclose the contribution.

3 The Respondents deny that the research was "testing the waters" activity related to  
4 Callahan's federal candidacy. Instead, they state that the research commissioned by the Mayoral  
5 Committee had "inherent value" and was "procured, and originally used" by Callahan's mayoral  
6 campaign, and was therefore properly paid for with funds from the Mayoral Committee.  
7 Response at 1, 2. The Respondents also state that when the Federal Committee eventually  
8 utilized the research to further Callahan's federal candidacy in January 2010, it paid the Mayoral  
9 Committee what it believed to be the fair market value of the research and timely disclosed the  
10 disbursement. *Id* at 2.

11 Based on the complaint, the response, and other available information, the Commission  
12 found reason to believe that John Callahan, Friends of John Callahan and John V. Filipos, in his  
13 official capacity as treasurer, and John Callahan for Congress and John V. Filipos, in his official  
14 capacity as treasurer, violated 2 U.S.C. § 441i(e) and 11 C.F.R. § 110.3(d), and that John  
15 Callahan for Congress and John V. Filipos, in his official capacity as treasurer, violated 2 U.S.C.  
16 § 434(b)(3) and (4).

## 17 **II. FACTUAL AND LEGAL ANALYSIS**

### 18 **A. Factual Summary**

19 John Callahan is a candidate for the United States House of Representatives for  
20 Pennsylvania's 15<sup>th</sup> Congressional District. Callahan officially announced his federal candidacy  
21 on July 27, 2009. He filed his Statement of Candidacy with the Commission on July 31, 2009,  
22 and his Federal Committee filed its Statement of Organization on the same day. Before that time  
23 he had made no official statements indicating that he had decided to run and raised no funds for a

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1 Congressional race.<sup>2</sup> The Federal Committee timely filed its first disclosure report, the 2009  
2 October Quarterly Report, on October 15, 2009.

3 Callahan is also the current mayor of Bethlehem, Pennsylvania. He was first elected to  
4 the office in November 2003, and ran for and won re-election in 2005 and 2009. *See*  
5 <http://www.bethlehem-pa.gov/about/mayor>. He ran unopposed in the 2005 general election, as  
6 well as in the May 19, 2009, primary and the November 3, 2009, general election. *Id.*

7 The complaint alleges that disbursements made by Callahan's Mayoral Committee to  
8 Stanford Campaigns funded "testing the waters" activity related to Callahan's federal candidacy,  
9 and that "[c]ertainly the results of this research were used in determining whether or not  
10 Callahan should become a candidate," and therefore constituted an impermissible in-kind  
11 contribution to the Federal Committee. In support of the allegation, the complaint points to an  
12 October 22, 2009, article ("*Morning Call* article") regarding the opposition research tactics of  
13 Callahan and Representative Charlie Dent, the leading Democratic and Republican candidates  
14 for the 15<sup>th</sup> District Congressional seat, respectively. Complaint, Attachment 3. The article  
15 reports that, "Callahan, before he even announced a run, hired a Democratic research firm to find  
16 out what criminal background checks in the name John Callahan would dig up, according to  
17 campaign manager Justin Schall." *Id.* The article also states that Callahan was curious to know  
18 "what a check of contractors who had done business with the city would reveal." *Id.*

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<sup>2</sup> Although Callahan declared his candidacy on July 25, 2009, he reportedly "confirmed his interest" in a Federal candidacy as early as June 24, 2009, when he stated that he was "seriously considering a run." *See* Lynn Olanoff, *U.S. Rep. Charlie Dent's Campaign Manager Calls for Bethlehem Mayor John Callahan to Drop his Mayoral bid if he runs for Congress* (June 25, 2009), at <http://www.lehighvalleylive.com/bethlehem/index.ssf?/base/news-1/12459027875130.xml&coll=3> (last visited August 3, 2010). *See also* Bill Wichert, *Bethlehem Mayor John Callahan announces Congressional Bid*, (July 25, 2009), at [http://www.lehighvalleylive.com/bethlehem/index.ssf/2009/07/bethlehem\\_mayor\\_john\\_callahan\\_2.html](http://www.lehighvalleylive.com/bethlehem/index.ssf/2009/07/bethlehem_mayor_john_callahan_2.html) (Callahan announces his Congressional candidacy).

1 Respondents deny that the research was “testing the waters” activity in relation to  
2 Callahan’s federal candidacy, and instead maintain that it had “inherent value” to the mayoral  
3 campaign and therefore was properly paid for with funds from the Mayoral Committee.  
4 Response at 2. Respondents also maintain that background self-research, unlike a poll, does not  
5 clearly indicate that a candidate is considering a run for office, but “may be used for a variety of  
6 purposes not related to federal elections.” *Id.* at 3. They also assert that at the time of the  
7 payments, Callahan had made no decision regarding a possible Congressional run and was in fact  
8 still raising funds for his mayoral election. *Id.* at 2.

9 Respondents point out that the *Morning Call* article does not directly quote Callahan’s  
10 federal campaign manager, and that he never stated that the research was to benefit the federal  
11 campaign, or even to “test the waters” for a possible federal candidacy. *Id.* at 3. Respondents  
12 also state that the federal campaign manager “made clear to the reporter several times that the  
13 research had intrinsic value to the ongoing mayoral campaign and therefore had to be paid for  
14 with funds from the mayoral campaign committee.” *Id.* In addition, Respondents maintain that  
15 the federal campaign manager informed the reporter that “the federal campaign was not using the  
16 research but that, when and if the mayoral campaign was over, and a potential federal campaign  
17 decided to utilize the research, the federal committee would pay the Mayoral committee the fair  
18 market value for use of the research.” *Id.* According to Respondents, the Federal Committee  
19 paid \$5,000 to the Mayoral Committee on January 15, 2010 “for the pro-rated cost to purchase  
20 the research,” before it used the research. *Id.* at 4. The Federal Committee reported that \$5,000  
21 payment on its 2010 April Quarterly Report filed with the Commission.

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**B. Legal Analysis**

The Act prohibits a federal candidate, a candidate's agent and entities established, financed, maintained or controlled by them from soliciting, receiving, directing, transferring or spending funds in connection with a federal election, unless those funds are subject to the limitations, prohibitions and reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A).

Likewise, transfers of funds or assets from a candidate's non-federal campaign committee or account to his or her principal campaign committee for a federal election are prohibited. 11 C.F.R. § 110.3(d). A candidate's federal campaign committee may, however, purchase goods and services from its non-federal campaign committee so long as the federal campaign committee pays the "usual and normal charge" for such goods and services. 2 U.S.C. §§ 431(8)(A)(i); 441b(b)(2); 11 CFR 100.52(d)(1).

In 2009, the Mayoral Committee paid \$9,932 for opposition self-research by Stanford Campaigns. On January 15, 2010, the Federal Committee paid the Mayoral Committee \$5,000 for "the pro-rated cost to purchase the research." Response at 3. However, it is unclear on what basis the Federal Committee calculated its pro-rated share of the research that it purchased. If the Federal Committee used the entire file that Stanford Campaigns compiled for the Mayoral Committee in the middle of 2009 for \$9,932, then the \$5,000 that the Federal Committee paid for the research in January 2010, may not have been the usual and normal charge for that research, which would be in violation of the Act and Commission regulations.

Based on the above, the Commission found reason to believe that John Callahan, Friends of John Callahan and John V. Filipos, in his official capacity as treasurer, and John Callahan for Congress and John V. Filipos, in his official capacity as treasurer, violated 2 U.S.C. § 441i(e) and 11 C.F.R. § 110.3(d). The Commission also found reason to believe that John Callahan for

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- 1 Congress and John V. Filipos, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(3)**
- 2 and (4).**

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